IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5943 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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RAJNIKANT N GANDHI - Petitioner(s)

Versus

PRESIDENT & 1 - Respondent(s)

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Appearance :
NOTICE UNSERVED for Petitioner(s) : 1,RULE NOT RECD BACK for Petitioner(s) : 1,
MR LB DABHI, AGP for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 17/11/2005

ORAL JUDGMENT

1. The petitioner is General Secretary of All Gujarat Sangharshshil Kamdar Union. The

petition is filed on behalf of its five members praying for direction in the nature of mandamus directing the respondent Nos.1 and 2 not to terminate the services of the members of the petitioners Union in any manner whatsoever without following the due process of law. The petitioners have also sought for the direction to the respondent Nos.1 and 2 to give the difference of salary to Shri K.B.Dedun and Shri M.H.Chauhan as per Desai and 4th Pay Commission recommendations, after fixation of their pay as and when these pay commission were made applicable and benefits were given to other staff members. The petitioners have also prayed for the direction that Shri Damor Jatavat and Thakerda are also entitled to the difference of salary in the pay scale of Sarela, Desai and 4th Pay Commission and also entitled to have fixation of pay from the date these pay commission recommendations are

implemented and benefits flowing there from are given to other staff members of the respondent No.1. The petitioners have also prayed for direction to the respondents to give the benefit of weekly off, festival and national holidays and EL to the members of the petitioner union as are given to the other employees of the respondent No.1. The petitioners have further prayed for grant of interest at the rate of 18% p.a., on the arrears of salary payable by respondent No.1 to Shri Dedun, Chauhan, Damor, Jetavat and Thakerda from the date it become payable till its realization.

2. It is the case of the petitioner that the members of the petitioner Union Shri Dedun, Chauhan, Damor, Jetavat and Thakerda are denied the recommendations of Pay Commission, whereas other staff members are given the benefits.

Thus discrimination offends Article 14 of the Constitution of India. It is further stated in the petition that the resolution to remove such discrimination was passed and one person is appointed, and advertisement is given to appoint new persons in place of the above members of the petitioner Union and hence the present petition is filed.

3. An affidavit in reply was filed on behalf of the respondent No.1 on 31.8.1994. Mr.L.B.Dabhi, learned AGP has submitted that no sanction has been given by the Development Commissioner, Gandhinagar for the post of present petitioners, and therefore they can not be given the benefit of the amended pay scale as per the resolution passed by State. He has further submitted that there is no discrimination played by respondent. The benefit of amended pay scale is given to all

the employees who are entitled as per the resolution passed by the State. He has further submitted that Vari Gruh Yojana started in 1977 in Idar Nagar Panchayat and at that time no post for plumber was sanctioned and therefore Shri K.B.Dedun was working on daily wages on muster as per the requirement of the Vari Gruh. A resolution was passed on 23.12.1981 that one post for plumber be created and Shri K.B.Dedun be appointed for the same for the period of eleven months. But the sanction for the said post was not given by the Development Commissioner, State of Gujarat and therefore he was not entitled for the benefit of the pay scale under para-3 of Desai Panch.

4. Mr.Dabhi, further submitted that Shri Madhaji Hajurji Chauhan is working as Lineman since the beginning of Vari Gruh Yojana of Nagar Panchayat. He was working as daily wager on

the muster as per the requirement. The proposal for the said post is still pending and the sanction is not yet received. He was appointed as lineman cum operator for the period of eleven months. But as the sanction from Development Commissioner, State of Gujarat, is awaited, he is not entitled for the benefits under pay scale of Desai Panch. He has further submitted that a case has been filed by Madhaji Hajurji vide case No.4150 of 1991 dated 27.12.1991 before Labour Court at Ahmedabad and said Shri Chauhan is being paid his pay alongwith D.A., and additional D.A., every month. His case before Labour Court is pending and awaiting decision and therefore nothing can be decided by respondents till the matter is pending. Mr.Dabhi further submitted that Shri Jivabhai V. Adivasi is working on daily wages as casual labourer since 1988-89 as per the requirement by Vari Gruh of Nagar Panchayat.

He is not appointed employee of Nagar Panchayat nor any post has been sanctioned for him as per his demand. He is operating motor to make it on and off while direct supply of water is to be made from the two to three wells of Nagar Panchayat and he does labour job during rest of the time and therefore he is not entitled to the benefits of the pay scale. Mr.Dabhi further submitted that Shri J.V.Damor has been appointed after 31.1.1978 and therefore the rules and regulations sanctioned in Resolution dated 31.1.1992 is not applicable to him and therefore he is not entitled for the benefits of the pay scale as per the resolution. Mr.Dabhi further submitted that Shri Vishnuji Somaji is also working on daily wages and on casual labour with Vari Gruh since 1990. He is not appointed employee nor post has been sanctioned and therefore, under the circumstances he is not entitled for the

benefits of the pay scale as per the resolution.

5. Mr.Dabhi further submitted that as per the new action plan it was decided to solve all the applications which were pending for getting new connections, lickage, repairing, stand post repairing etc., by engaging the labour on daily wages. Hence, accordingly an advertisement was also published in the news papers “Sprint lense” dated 22.3.1994. Three applications were received in the response but District Development Commissioner in this respect vide his letter dated 8.4.1994 has informed that no one has been engaged or appointed nor any one is paid accordingly.

6. Considering the aforesaid affidavit in reply filed by the respondent No.1 this Court has passed an order on 19.10.1994. The Court has

also observed in the said order that the petition is already admitted on 22.4.1994 and matter was placed for interim relief. The workmen concerned were issued a letter that they were appointed as probationers way back in the year 1981, though it was their case that they have been working from 1977. The respondent No.1 has not taken any steps to fill the posts, on which they were working or to regularize them. Only two resolutions have been passed way back on 29.7.1976 and 28.9.1983 in that behalf. However, no one was in a position to state as to what has happened thereafter. In this view of the matter, the Court has passed an order granting interim relief restraining the respondent from terminating service of these five workmen except by due process of law, until the main petition is heard and disposed off. The Court has also made it clear that other prayer

pressed by way of interim relief is prayer Clause 18(H). The benefits thereunder are available to the employees appointed prior to 31.1.1978 as per Annexure-A to the petition. That is an aspect which has to be gone into when the matter is finally heard and the benefits thereunder cannot be granted. The Court has, therefore, rejected the said prayer. The Court has further observed that since the proposal for regulation in this behalf has been pending for quite some time, the respondents shall take it up with the appropriate authorities to take a decision thereon at the earliest.

7. Pursuant to the aforesaid order, Director of Municipalities has passed an order on 27.11.1999 whereby sanction was given with regard to Shri K.B.Dedun, and Shri M.H.Chauhan. Mr.Dabhi, has placed the said order on record.

He has further submitted that Shri M.H.Chauhan expired and all the legal benefits were given to the legal heirs of the deceased. With regard to the remaining three members of the petitioner Union, Mr.Dabhi submitted that pursuant to the order passed by this Court on 19.10.1994 they are still in service and they have been given their wages as per the rules and regulations.

8. The petition is filed by Shri M.H.Shaikh on behalf of the petitioners. Mr.M.H.Shaikh, learned advocate for the petitioner's union expired and thereafter fresh notice was issued by this Court on 17.6.2005. The matter has been listed thereafter from time to time and yet the petitioner Union has not taken any care to appear, despite the fact that the grievance of two of its members have already redressed.

9. Considering the above facts and circumstances of the case and considering the development in the matter after filing of the aforesaid petition, the Court is of the view that the present petition does not survive, so far as Shri K.B.Dedun and Shri M.H.Chauhan are concerned. However, with regard to the remaining three other members of the petitioner Union they are also protected by this Court by way of interim relief. The Court, therefore, continue the said interim relief and allow the said petition to this extent reserving the liberty for the remaining three members of the petitioner Union to approach this Court in future if they have any grievance and if need so arises in future. The Court adopts this course only because the petitioner's advocate has expired and no other alternative arrangement has been made by the petitioner.

10. Subject to the aforesaid directions and observations, present petition is accordingly disposed off. Rule is made absolute to the above extent without any order as to costs.

kks (K. A. PUJ, J.)